

Exhibit 15



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Transcript of Matthew J. DeSarno, Designated Representative

Date: April 9, 2018

Case: El Hady, et al. -v- Kable, et al.

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Transcript of Matthew J. DeSarno, Designated Representative 2 (5 to 8)
Conducted on April 9, 2018

5	7
C O N T E N T S	P R O C E E D I N G S
2 EXAMINATION OF MATTHEW J. DESARNO PAGE	2 Whereupon,
3	3 MATTHEW J. DESARNO,
4 By MR. ABBAS 7	4 being first duly sworn or affirmed to testify to
5 By MS. POWELL 6	5 the truth, the whole truth, and nothing but the
6 By MR. ABBAS 7	6 truth, was examined and testified as follows:
7 By MS. POWELL 20	7 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS
8 By MR. ABBAS 2	8 BY MR. ABBAS:
9 By MS. POWELL 84	9 Q. Please state your full legal name for
0 By MR. ABBAS 85	10 the record.
By MS. POWELL 259	11 A. Matthew J. DeSarno.
2 By MR. ABBAS 260	12 Q. Mr. DeSarno, why are you here today?
3 By MS. POWELL 323	13 A. I'm here for a deposition related to
4 By MR. ABBAS 323	14 the -- testifying on behalf of the FBI related to
5 By MS. POWELL 324	15 a watchlisting suit.
6 By MR. ABBAS 325	16 Q. You understand that your testimony today
7 By MS. POWELL 383	17 is binding on the agency?
8 By MR. ABBAS 384	18 A. Yes.
9 By MS. POWELL 390	19 Q. What is the Watchlisting Advisory
20 By MR. ABBAS 39	20 Council?
2 By MS. POWELL 393	21 A. The Watchlisting Advisory Council is an
22 By MR. ABBAS 393	22 advisory council made up of the member agencies
6	8
By MS. POWELL 394	1 involved in the U.S. government watchlisting
2 By MR. ABBAS 394	2 process. The advisory council meets I believe
3	3 quarterly to discuss gaps in the watchlisting
4	4 process, improvements to the watchlisting process,
5	5 and to provide recommendations to the Homeland
6	6 Security Council as part of the NCS for proposed
7	7 modifications to watchlisting guidelines.
8	8 Q. Who created the Watchlisting Advisory
9	9 Council?
0	10 MS. POWELL: Objection; vague.
2	11 MR. ABBAS: I withdraw my question.
3	12 BY MR. ABBAS:
4	13 Q. What is the FBI's role in the
5	14 Watchlisting Advisory Council?
6	15 A. The FBI is one of the member agencies
7	16 who sits on the Council. And we send a
8	17 representative to the advisory council meetings.
9	18 Q. Are all representatives to the
20	19 Watchlisting Advisory Council coequal?
2	20 A. Meaning do they all have equal vote; is
22	21 that the question?
	22 Q. That was not the question.

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<p>26</p> <p>1 answer.</p> <p>2 Q. What does it mean to have reasonable</p> <p>3 suspicion that a person is a suspected terrorist?</p> <p>4 MS. POWELL: Objection; misleading and a</p> <p>5 comprehensive answer would require disclosure of</p> <p>6 law enforcement sensitive information.</p> <p>7 MR. ABBAS: I'll withdraw the question.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Does a suspected terrorist as defined by</p> <p>10 the watchlisting guidance have to be engaged in</p> <p>11 criminal conduct?</p> <p>12 MS. POWELL: Objection; vague, and</p> <p>13 misleading, and a comprehensive answer would</p> <p>14 require disclosure of law enforcement sensitive</p> <p>15 information, but I do think there's a general</p> <p>16 answer you can give.</p> <p>17 THE WITNESS: I mean, the inclusion</p> <p>18 standard as stated in this paragraph on page 4 of</p> <p>19 Exhibit B clearly indicates that there's no</p> <p>20 requirement for criminal activity to be included</p> <p>21 in the watchlisting.</p> <p>22</p>	<p>263</p> <p>1 is engaged, has been engaged, or intends to engage</p> <p>2 in conduct constituting in preparation for, in</p> <p>3 aid, or in furtherance of related to terrorism</p> <p>4 and/or terrorist activities.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Does being related to a person -- let me</p> <p>7 ask this: Does a person who is nominated to the</p> <p>8 TSDB -- let me try again.</p> <p>9 Must individuals who the FBI nominates</p> <p>10 to the TSDB be under investigation?</p> <p>11 MS. POWELL: Objection; calls for law</p> <p>12 enforcement privileged information.</p> <p>13 I'm instructing the witness not to</p> <p>14 answer.</p> <p>15 Q. Must an individual --</p> <p>16 MR. ABBAS: On what basis?</p> <p>17 MS. POWELL: The law enforcement</p> <p>18 privilege.</p> <p>19 MR. ABBAS: Okay.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. In order to nominate an individual to</p> <p>22 the TSDB, must the FBI have conducted an</p>
<p>262</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. So it's not reasonable for suspected</p> <p>3 terrorists that are nominated to the TSDB, the</p> <p>4 reasonable suspicion is not that they're engaged</p> <p>5 in criminal conduct; correct?</p> <p>6 MS. POWELL: Objection; misleading, and</p> <p>7 mischaracterizes prior testimony.</p> <p>8 Q. If I'm wrong, tell me I'm wrong. That's</p> <p>9 fine.</p> <p>10 MS. POWELL: You're using different</p> <p>11 definitions of the words.</p> <p>12 MR. ABBAS: I'm using just the</p> <p>13 government's words. I'll ask it again.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. In order to be included in the TSDB,</p> <p>16 there must be reasonable suspicion that a person</p> <p>17 is either a known terrorist or a suspected</p> <p>18 terrorist; correct?</p> <p>19 MS. POWELL: Objection; misleading and</p> <p>20 mischaracterizes prior testimony.</p> <p>21 THE WITNESS: In order to be included,</p> <p>22 there must be reasonable suspicion the individual</p>	<p>264</p> <p>1 assessment of that individual?</p> <p>2 MS. POWELL: Objection; calls for law</p> <p>3 enforcement information.</p> <p>4 I'm instructing the witness not to</p> <p>5 answer.</p> <p>6 I do want to withdraw my blanket</p> <p>7 instruction to the previous question, though. To</p> <p>8 the extent there is any non-privileged information</p> <p>9 you can give about whether there's always an</p> <p>10 investigation connected to a nomination, you may.</p> <p>11 If you're not sure, we can consult later, but...</p> <p>12 Q. I'll go back to that question. I'll ask</p> <p>13 it again.</p> <p>14 A. Okay.</p> <p>15 Q. In order for the FBI to nominate an</p> <p>16 individual to the TSDB, must there be an</p> <p>17 investigation regarding the prospective listee?</p> <p>18 A. No.</p> <p>19 THE WITNESS: Sorry.</p> <p>20 MS. POWELL: Let me sneak in the</p> <p>21 objection that a comprehensive explanation of the</p> <p>22 answer would require the disclosure of law</p>

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<p style="text-align: right;">265</p> <p>1 enforcement privileged information. That answer 2 was not privileged. 3 BY MR. ABBAS: 4 Q. Why would the FBI try to place people in 5 the TSDB that are not being investigated? 6 MS. POWELL: Same objection that a 7 comprehensive explanation of the answer would 8 require disclosure of law enforcement privileged 9 information. To the extent there is a 10 non-privileged answer you can give, you can. If 11 not, we can come back to it at a later time. 12 THE WITNESS: If during the course of an 13 investigation or during the course of either a 14 foreign partner engagement or other agency 15 engagement, the FBI developed information about 16 someone who was overseas who met this inclusion 17 standard, but did not -- did not -- the FBI 18 decided that it was not going to open an 19 investigation on that person, in that instance, 20 the FBI could make a nomination if it met this 21 standard on that overseas person. 22</p>	<p style="text-align: right;">267</p> <p>1 furtherance of or related to terrorism and/or 2 terrorists activities who are not under 3 investigation -- I m sorry, I m just going to 4 start all over and we ll get it this time now that 5 I know what the question is. 6 Is it the FBI s testimony today that 7 there are individuals known to the FBI who are 8 reasonably suspected of engaging in or having been 9 engaged or intending to engage in conduct 10 constituting in preparation for, in aid of, or in 11 furtherance of, or related to terrorism or 12 terrorist activities who the FBI chooses not to 13 investigate? 14 MS. POWELL: Again, a comprehensive 15 answer would require law enforcement privileged 16 information, but you can answer yes or no. 17 MR. ABBAS: Yes, that s all I m looking 18 for. 19 THE WITNESS: Overseas there are people 20 who fit that category who are not subjects of 21 current FBI investigations. 22</p>
<p style="text-align: right;">266</p> <p>1 BY MR. ABBAS: 2 Q. Why would the FBI place someone in the 3 TSDB and not investigate that person? 4 MS. POWELL: Objection, I think any 5 further answer other than the example he has given 6 you would require disclosure of law enforcement 7 privileged information. 8 MR. ABBAS: Sure. 9 BY MR. ABBAS: 10 Q. When the FBI nominates a person to the 11 TSDB, the FBI is expressing its opinion that that 12 person is a known or suspected terrorist; correct? 13 A. The FBI is indicating that it meets this 14 inclusion standard here that there's reasonable 15 suspicion that the individual is engaged, has been 16 engaged, or intends to engage in preparation, aid, 17 or furtherance of terrorism activities. 18 Q. Is it the FBI's testimony today that 19 there are individuals known to it that are 20 reasonably suspected of engaging or having been 21 engaged or intending to engage in conduct 22 constituting in preparation for, in aid, or in</p>	<p style="text-align: right;">268</p> <p>1 BY MR. ABBAS: 2 Q. When you say "overseas," is the -- so 3 there are individuals that satisfy the TSDB 4 inclusion standard who are known to the FBI that 5 the FBI chooses not to investigate; correct? 6 MS. POWELL: Asked and answered. 7 MR. ABBAS: I m making sure -- 8 MS. POWELL: As well as same objections. 9 MR. ABBAS: I m making sure that I have 10 this. 11 MS. POWELL: And misleading. 12 THE WITNESS: Yeah, my previous answer 13 was pretty clear. That there are people overseas 14 who fit into this category who are not subject 15 currently of FBI investigations. 16 BY MR. ABBAS: 17 Q. Are there U.S. persons overseas that the 18 FBI has nominated to the TSDB who are not subject 19 to an investigation? 20 MS. POWELL: I m instructing the witness 21 not to answer on the grounds of law enforcement 22 privilege to that question.</p>

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<p style="text-align: right;">269</p> <p>1 Q. Why would the FBI not investigate people 2 that satisfy the TSDB inclusion standard? 3 MS. POWELL: I'm instructing the witness 4 not to answer on the grounds of the law 5 enforcement privilege. 6 Q. What is the law enforcement interest in 7 placing people in the TSDB but not investigating 8 them? 9 MS. POWELL: Objection; misleading at 10 the very least, but also a comprehensive answer 11 would require disclosure of law enforcement 12 sensitive information and -- 13 MR. ABBAS: I think he can answer. 14 MS. POWELL: He can answer whether or 15 not there s a law enforcement interest. 16 BY MR. ABBAS: 17 Q. It was a what, not an if. 18 What is the law enforcement interest in 19 placing people on the TSDB but not investigating 20 them? 21 MS. POWELL: Same objections. 22 You can answer, if there s a general</p>	<p style="text-align: right;">27</p> <p>1 BY MR. ABBAS: 2 Q. What is your understanding of what the 3 term "non-investigative subjects" refers to? 4 MS. POWELL: I'm instructing the witness 5 not to answer on the grounds of law enforcement 6 privilege. 7 Q. Are there non-investigative subjects 8 that the FBI nominates to the TSDB? 9 MS. POWELL: Objection; calls for law 10 enforcement privileged information. 11 I'm instructing the witness not to 12 answer. 13 Q. The FBI conducts assessments; correct? 14 A. Yes. 15 Q. What is an FBI assessment? 16 A. Generally, an assessment is a 17 pre-investigative assessment of a threat to 18 determine the nature of the threat and to either 19 mitigate the threat or develop it to the level of 20 an investigation. 21 Q. How many assessments did the FBI conduct 22 in 2017?</p>
<p style="text-align: right;">270</p> <p>1 answer. 2 THE WITNESS: Generally, I mean, the FBI 3 may not be investigating them, but someone else 4 may be investigating them if they re in another 5 country and posing -- and fit into this category 6 but are in another country, then it s likely that 7 someone is investigating them, but possibly not 8 the FBI. 9 BY MR. ABBAS: 10 Q. Are there any persons inside the United 11 States who the FBI has nominated to be in the 12 TSDB, but the FBI is not investigating? 13 MS. POWELL: Objection. 14 I'm instructing the witness not to 15 answer on the grounds of the law enforcement 16 privilege. 17 MR. ABBAS: It s a yes-or-no question. 18 BY MR. ABBAS: 19 Q. Are you familiar with the term 20 "non-investigative subjects"? 21 MS. POWELL: You can answer yes or no. 22 THE WITNESS: Yes.</p>	<p style="text-align: right;">272</p> <p>1 MS. POWELL: Objection; calls for law 2 enforcement privileged information. 3 I'm instructing the witness not to 4 answer. 5 Q. How many -- we re just going to repeat 6 this a couple of times. 7 MS. POWELL: I'm good. 8 Q. How many FBI assessments -- how many 9 assessments did the FBI conduct so far in 2018? 10 MS. POWELL: Objection. 11 I'm instructing the witness not to 12 answer on the grounds of law enforcement 13 privilege. 14 Q. How many assessments did the FBI conduct 15 in 2016? 16 MS. POWELL: Same objection. 17 I'm instructing the witness not to 18 answer. 19 Q. How many assessments did the FBI conduct 20 in 2015? 21 MS. POWELL: Same objection. 22 I'm instructing the witness not to</p>